

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

INNOVATION VENTURES, LLC
d/b/a LIVING ESSENTIALS,

Plaintiff,

vs.

CASE NO. 08-11867
HON. LAWRENCE P. ZATKOFF

N.V.E., INC.,

Defendant.

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on May 4, 2010

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter comes before the Court on Plaintiff's objection [dkt 197] to Magistrate Judge Scheer's order granting in part and denying in part Defendant's motion to compel, and Plaintiff's objection [dkt 218] to Magistrate Judge Scheer's order denying Plaintiff's motion for reconsideration. The Court finds that the facts and legal arguments are adequately presented in Plaintiff's papers such that the decision process would not be significantly aided by oral argument. Therefore, pursuant to E.D. Mich. L.R. 7.1(e)(2), it is hereby ORDERED that the objections be resolved on the briefs submitted. For the reasons set forth below, both objections are DENIED.

II. BACKGROUND

Defendant filed a motion to compel deposition transcripts from certain other cases in which Plaintiff was a party [dkt 119]. After a hearing on the matter, Judge Scheer ordered [dkt 175] Plaintiff to produce deposition transcripts requested by Defendant in its motion to compel, as well as additional transcripts requested in Defendant's reply brief. Plaintiff filed a motion for reconsideration [dkt 196] and an objection [dkt 197] to Judge Scheer's order in consecutive days. Judge Scheer denied Plaintiff's motion for reconsideration [dkt 212], restating that the conclusion reached in the order compelling the production of the deposition transcripts was due to the fact that "Plaintiff has been less than candid in its responses to Defendant's discovery requests." Plaintiff then filed an objection to Judge Scheer's denial of Plaintiff's motion for reconsideration [dkt 218].

III. LEGAL STANDARD

Objections asserted pursuant to 28 U.S.C. § 636(b)(1)(A) are reviewed to determine whether a magistrate judge's order is clearly erroneous or contrary to law. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

IV. ANALYSIS

A. Plaintiff's Objection to Magistrate Judge Scheer's Order to Compel [dkt 197]

Plaintiff argues that the relief granted by Judge Scheer is contrary to law insofar as other courts have denied claims for discovery in prior lawsuits absent a showing that the claims or defenses asserted in the other lawsuits are identical to those alleged in the instant case. However, Plaintiff has not provided any binding authority in support of its position. *See Chen v. AMPCO*

System Parking, No. 08-CV-0422-BEN (JMA), 2009 WL 2496729, *1 (S.D. Cal. Aug. 14, 2009); *Oklahoma v. Tyson Foods, Inc.*, No. 05-CV-329-TCK-SAJ, 2006 WL 2862216, *1 (N.D. Okla. Oct. 4, 2006); *Donovan v. Lewnowski*, 221 F.R.D. 587 (S.D. Fla. 2004). The fact that district courts in other circuits have held differently than Judge Scheer is insufficient to demonstrate that Judge Scheer's decision in this case was clearly erroneous.

B. Plaintiff's Objection to Magistrate Judge Scheer's Order Denying Plaintiff's Motion for Reconsideration [dkt 218]

Plaintiff argues that Judge Scheer's denial of Plaintiff's motion for reconsideration is clearly erroneous for two reasons: (1) there is no factual support for Judge Scheer's conclusion that "Plaintiff has been less than candid in its responses to Defendant's discovery requests[]"; and (2) relying on the same authority cited *supra*, other courts have denied claims for discovery in prior lawsuits absent a showing that the claims or defenses asserted in the other lawsuits are identical to those alleged in the instant case.

While Plaintiff argues that there is no factual support for Judge Scheer's conclusion that Plaintiff has been less than candid in its discovery responses, Plaintiff offers no evidence contradicting Judge Scheer's conclusion. Plaintiff's bare assertion is insufficient to establish that Judge Scheer's decision was clearly erroneous. Furthermore, as stated *supra*, Plaintiff's citation to non-binding authority is insufficient to demonstrate that Judge Scheer's decision was clearly erroneous.

V. CONCLUSION

For the reasons stated above, IT IS HEREBY ORDERED that Plaintiff's objection to Magistrate Judge Scheer's order granting in part and denying in part Defendant's motion to compel [dkt 197] is DENIED.

IT IS FURTHER ORDERED that Plaintiff's objection to Magistrate Judge Scheer's order denying Plaintiff's motion for reconsideration [dkt 218] is DENIED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: May 4, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on May 4, 2010.

S/Marie E. Verlinde
Case Manager
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